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REPORT
No. 98–175

DECLARING THAT THE UNITED STATES HOLDS CERTAIN LANDS IN TRUST FOR THE KAW TRIBE OF OKLAHOMA

JULY 11, 1983.—Ordered to be printed

Mr. ANDREWS, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 1168]

The Select Committee on Indian Affairs, to which was referred the bill (S. 1168) to declare that the United States holds certain lands in trust for the Kaw Tribe of Oklahoma, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 1168 is to provide that the United States shall hold in trust for the use and benefit of the Kaw Indian Tribe some 132.5 acres of land in Kay County, Okla. The land in question was acquired by the U.S. Corps of Engineers in the early 1970's in connection with the Kaw Lake project in Oklahoma. Fifteen acres of this land have been utilized by the Kaw Indian Tribe and BIA under a use permit since 1975. The remainder of the land is undeveloped agricultural acreage. S. 1168 will provide that the United States holds the surface rights to the entire 132.5 acres in trust for the Kaw Tribe of Indians.

BACKGROUND AND NEED

Since 1975, there have been extensive negotiations between the Kaw Indian Tribe, the Bureau of Indian Affairs (BIA), the Corps of Engineers, and the General Services Administration (GSA) in an attempt to secure this acreage for the Kaw Tribe. However, given the unique circumstances of the land transaction, the Kaw Tribe is not eligible to receive surplus lands under the Federal and Administra-

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tive Property Services Act of 1949, as amended, (Public Law 93–599; 40 U.S.C. 483(a)(2)(2)).

In 1982, the Corps of Engineers declared this property to be "excess," thereby transferring authority over the property to the General Services Administration for disposition. The interests of the United States consist of the surface rights to the 132.5 acres, as well as five-sixths interest in subsurface mineral rights. Both surface and mineral rights have been declared excess. In April 1983, GSA conducted a "public body screening" to determine whether any local governmental entity had an interest in acquiring the property. The only governmental entity to respond was the BIA which declared an interest in the 15-acre portion where the tribal council House presently stands.

The Kaw Tribe of Oklahoma is a federally recognized Indian tribe with tribal headquarters located in Kay County, Okla. Due to a series of Federal statutes commencing early in the 20th century culminating in the condemnation of property by the Corps of Engineers in the late 1960's through the early 1970's, the Kaw Tribe lost its entire trust land base. The tribe has since acquired a small parcel of land for a housing project some 25 miles distant from the tribal headquarters. The Kaw Tribe consists of approximately 800 members, the majority of whom live in the vicinity of this property.

Before moving to Oklahoma, the Kaw Tribe was located mainly in northern Kansas. Through a series of treaties, its land dwindled until, on June 5, 1872, the tribe sold its land in Kansas and resettled on a reservation in Oklahoma in an area which came to be the part of Kay County east of the Arkansas River. The tribe purchased this land from the Osage Tribe, which had acquired it from the Cherokee. All of this land was held in trust by the United States for the Kaw Tribe.

On July 1, 1902, Congress passed an act (32 Stat. 636), which, among other things, allowed the Kaw Tribe to allot their new land to members of the tribe. All of this land, however, was not allotted to individuals.

The tribe transferred 160 acres of their reservation, which was reserved from allotment, to the U.S. Government which agreed to maintain a school and agency buildings there for at least 10 years. Although the term "ceded" was used, the tribe received no compensation for this cession, and it is apparent that the land was set aside for Indian purposes by the Congress. The land and improvements on the 160 acres was to be subject to final disposition by Congress. In 1910, less than 10 years after this agreement, the Government discontinued the boarding school which they had been maintaining on the school land and instead opened a small day school. The 1902 bill also allowed 20 acres of land to be reserved from allotment to be used as a cemetery. This was exempt from taxation and was carried on the records of the Bureau of Indian Affairs as land held in trust. There was also 80 acres reserved from allotment which was to be divided into town lots and sold at auction, with the proceeds going to the tribe. Any unsold lots were to be exempt from taxation and the title was to remain in trust for the tribe.

On April 29, 1922, the 160 acres of school reserve land was reduced when Congress enacted additional legislation (42 Stat. 1589, Sec. 7) allotting 150 acres of that land to two tribal members, Addie May and Archie William Auld, who had somehow been overlooked in the origi-

nal 1902 allotment. This left 10 acres of school reserve land still set aside by Congress for the Kaw Tribe.

On April 28, 1924, Congress enacted further legislation (43 Stat. 111, 25 U.S.C. 401) which allowed the Secretary of the Interior to lease the remaining school reserve land and the cemetery land for mining purposes. The bill stipulated that the proceeds of the leases were to go "for the use and benefit of the members of the Kaw Tribe."

As the tribe entered the 1930's, there were three parcels of land on record for the tribe:

(1) Twenty acres of cemetery land, of which seven acres was in use and thirteen acres was being leased for farming, the proceeds going to the Kaw Cemetery Association for the maintenance of the cemetery. This was land held in trust and was on record with the Bureau of Indian Affairs.

(2) Three of the original 80 acres of town lots were still unsold, and although the land was in trust status, the Bureau of Indian Affairs was not aware of the fact of their existence until the Corps of Engineers raised questions regarding the titles in 1967.

(3) The Bureau of Indian Affairs carried the 10 acres of remaining school reserve land on its records as Government-owned, although it had specifically been set aside by Congress for the use of the Kaw Tribe and the 1924 act had clearly confirmed the equitable interest in the mineral rights of the property for the Kaw Tribe. This was the land the old council house was on, and it was used for meetings occasionally during the year.

On May 14, 1954, the Secretary of the Interior requested that the Bureau of Indian Affairs area offices dispose of excess Government land. This was to be done under the Federal Property and Administrative Services Act of 1949 (63 Stat. 377). The Assistant Commissioner of Indian Affairs approved the particular disposition of the Kaw School reserve land on April 28, 1955, and on May 6, the area director at Anadarko declared the property excess to the General Services Administration. For various reasons, including strong opposition from the Kaw Tribe, the proposal to dispse of this property was never consummated.

The approach of the Kaw Lake Reservoir project necessitated that all the Kaw trust lands in question be acquired by the Corps of Engineers. In a series of transactions, the Corps of Engineers acquired the various lands held on record by the Bureau of Indian Affairs for the Kaw Tribe and its members either by condemnation or voluntary sale.

The presence of the Kaw Tribal Council House on the 0.95 acres of school reserve land which still remained on record for the Kaw Tribe presented a unique problem because the council house had been placed on the National Register of Historical Places in June 1973. Eventually, it was decided to dismantle the Council House and move it to another location to be chosen by the tribal council. The council did choose a site and was led to believe by the Corps of Engineers that title to the new site would be transferred to the tribe in trust.

Then on September 22, 1975, the corps decided that the title could not be transferred in trust for the tribe. Instead, a "permit" was issued for an indefinite term. This meant that the tribe, instead of having the new 15-acre tract in trust status, was only "permitted" to use the

land—a status not at all parallel to the status of the old land and not in accord with what the tribe expected.

The tribe immediately began to seek means whereby the land could be conveyed to them. In December 1975, a delegation met with the Corps of Engineers in Tulsa. The tribe met with the corps again in August 1977. After this meeting, in November 1978, the corps declared surplus 132.5 acres of land which included the 15-acre parcel "permitted" to the Kaw Tribe. At this time, it was believed that the land could be transferred to the tribe under the provisions of the Federal and Adminisrative Property Services Act of 1949, as amended. However, it was later determined that the provisions of this act did not permit the anticipated transfer.

Because the land declared surplus by the Corps of Engineers was not acquired by the Government from the tribe, but from non-Indians, and because the corps had condemned the original tribal landholdings, traded for cemetery land off the tribe's former reservation, and issued a permit instead of land in trust as the tribe had expected, the tribe apparently did not qualify under the act.

The net result apparent from this historical survey is that as a result of federal actions from 1902 through the mid-1970's, the Kaw Tribe of Oklahoma was deprived of their entire land base. The small parcel since acquired some 35 miles away is not adequate for the tribe's needs.

This legislation is necessary to provide the tribe with a land base for housing and economic development and as a permanent home for the tribe. Enactment of this legislation will also provide continued protection for the historic Kaw Tribal Council House.

LEGISLATIVE HISTORY

S. 1168 was introduced by Senator Boren on April 27, 1983, and is cosponsored by Senator Nickles. A companion bill, H.R. 3111, was introduced by Congressman Mickie Edwards in the House of Representatives on May 24, 1983. The Select Committee on Indian Affairs held hearings on S. 1168 on May 26, 1983. The bill was marked up and ordered reported out of committee on June 28, 1983.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Select Committee on Indian Affairs, in open business session on June 28, 1983, by a unanimous vote of a quorum present, recommends that the Senate pass S. 1168 without amendment.

SECTION-BY-SECTION ANALYSIS

This bill consists of only one section. The bill provides that all right, title and interest of the United States in the surface estate of 132.5 acres, more or less, located in certain lands located by Kay County, Okla., is hereby declared to be held by the United States in trust for the benefit and use of the Kaw Tribe of Oklahoma .

COST AND BUDGETARY CONSIDERATIONS

The cost estimates for S. 1168 as provided by the Congressional Budget Office are set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., July 5, 1983.

Hon. MARK ANDREWS,
Chairman, Select Committee on Indian Affairs, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 1168, a bill to declare that the United States holds certain lands in trust for the Kaw Tribe of Oklahoma, as ordered reported by the Senate Select Committee on Indian Affairs, June 28, 1983.

Based on this review, it is expected that enactment of this bill would result in no significant costs to the federal, state, or local governments. The bill provides that the United States hold in trust for the Kaw Tribe of Oklahoma approximately 132.5 acres of land in Kay County, Oklahoma. This land has been declared "excess" by the Corps of Engineers, and is valued at approximately $60,000.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The committee believes that S. 1168 will have no regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The communication received from the Department of the Interior is set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., June 22, 1983.

Hon. MARK ANDREWS,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for our views on S. 1168, a bill "To declare that the United States holds certain lands in trust for the Kaw Indian Tribe of Oklahoma."

We would have no objection to the enactment of S. 1168.

ANALYSIS

S. 1168, if enacted, would transfer 132.5 acres, more or less, of federally owned land which has been declared excess by the U.S. Army Corps of Engineers, to the Secretary to be held in trust for the Kaw Tribe of Oklahoma. The subject land is located in Kay County, Okla., approximately 30 miles northeast of Ponca City, Okla.

The transfer would be subject to all valid existing rights, including rights-of-way, mining claims, grazing permits, water rights or other rights of interests which any person may have in the subject land on the date preceding the date of enactment of this Act.

BACKGROUND

The Kaw is one of the five tribes in the Dhegiha group of the Souan Linguistic family. According to tradition, the five Tribes—Kaw, Osage, Ponca, Omaha, and Quapaw—were one people and lived along the Wabash River and far up the Ohio. Pushed westward by the encroachment of superior forces. they split at the mouth of the Ohio River. Those going down the Mississippi River took the name "Quapaw" or "Downstream People." The latter, afterward divided into four tribes—the Kaw, Osage, Ponca, and Omaha.

By terms of treaties with the United States from 1820 to 1846, the Kaw relinguished their claims to several million acres in Kansas and Nebraska, and a new reservation was assigned to them at Council Grove on the Neosha River in Kansas. These lands were finally overrun by white settlers, and in 1873, the tract was sold a new reserve purchased for the tribe near the Osage, in Indian Territory.

The Kaw Reservation in Oklahoma originally included approximately 100,137 acres of land. The land described in the subject bill is located within the original reservation boundaries and was allotted, pursuant to the act of July 1, 1902 (32 Stat. 636), to a Kaw tribal member who later sold it to a non-Indian. The Corps of Engineers subsequently condemned the property in 1970 for purposes of filling the Kaw Reservoir. On November 7, 1978, the corps declared the 132.5-acre parcel excess to their needs.

Within the subject lands lies a 15-acre tract which has been permitted by the corps to the Department of the Interior for use by the Kaw Tribe. This small tract contains the present site of the historic Kaw Council House and the tribe continues to use it for their tribal headquarters and ceremonial grounds.

The Kaw Council House was moved to its present site by the Army Corps of Engineers when it was determined by representatives of its advisory council and the Oklahoma State Historic Preservation officer that the Kaw Lake project would have an adverse effect on the council house. In addition, the Army Corps of Engineers agreed to transfer administrative control of the building to the Department of the Interior to be held in trust for the Kaw Tribe. However, the Department of the Army issued a permit to the Department of the Interior to "maintain and use a structure identified as the Kaw Council House and/or permit the maintenance and use of the said council house by the Kaw Tribe for tribal purposes." The permit is revocable at will by the Secretary of the Army."

Believing that the permit constitute "real property" be held in trust for them, the tribe attempted to acquire the 132.5-acre tract under the authority of Public Law 93–599 (88 Stat. 1954). The said act permits excess Federal property located inside an Indian reservation to be conveyed without compensation to the Secretary of the Interior in trust for the tribe residing on that reservation. Because many of the Oklahoma reservations were extinguished in the early 1900's, Congress included an additional provision which would make reservation boundaries subject to the following conditions: When the property—

"(1) is located within boundaries of former reservations in Oklahoma as defined by the Secretary of the Interior and when such real property was held in trust by the United States for an Indian tribe at the time of acquisition by the United States; or

"(2) is contiguous to real property presently held in trust by the United States for any Indian tribe and was at the time held in trust by the United States for an Indian tribe."

After researching the matter, we have concluded that the 132.5 acres cannot be transferred under either of the above special conditions. This decision was upheld in *Kaw Indian* v. *Department of the Interior*, United States District Court for the Western District of Oklahoma. Civ. 82–307–W. August 25, 1982.

The subject land is presently being used for agricultural and grazing purposes. Although there has been no formal appraisal, the Corps of Engineers has estimated the value of the land at approximately $60,000.

We understand that the tribe plans to use the 132.5 acres to construct additional housing units, a tribal cemetery and to further its economic development. The tribe now has the nucleus of a computer services operation on the 15-acre tract presently permitted to the tribe for which they have a financial commitment for the first year of operation. They hope to extend this business which will offer training and employment to the members of the tribe which now has a 45 percent unemployment rate.

The tribe plans to utilize income received from the agricultural and grazing leases for existing expenses from the administration of their tribal affairs, and for future development. It has been estimated that the corps is presently receiving approximately $18.00 per acre or $2.098.00 annually for the 117 acres of the subject land which they are leasing.

The Office of Management and Budget had advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely,

J. J. SIMMONS III,
Under Secretary.

CHANGES IN EXISTING LAW

In compliance with paragraph 4 of rule XXVII of the Standing Rules of the Senate, the committee notes that no changes in existing law are made by S. 1168.

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